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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,044	02/01/2001	Reinhold Stadler	49248	7928

26474 7590 01/21/2003

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1350 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09
762044

Applicant(s)

STADLER et al

Examiner

NBE Low

Group Art Unit

1616

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10/4/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-10, 12-14 is/are pending in the application.
- Of the above claim(s) 4-7, 12 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-3, 8, 9, 10, 13 & 14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-10, 12-14 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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Receipt is acknowledged of amendment and translation of 10/21/02.

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 11-13 been renumbered 12-14. A claim 11 had been present, and previously cancelled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4-7, 12 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Claims 1-3, 8-10, 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Saur et al Ca 2178655.

The rejection of record is maintained.

Claims 1-3, 8-10, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saur et al in view of Rei – 4663359 or Arnold-Lip 058256.

The rejection of record is maintained.

Applicant's arguments filed on 10/21/02 have been fully considered but they are not persuasive. Applicant argues Sauer has no instant heat input, thus not the same

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method, while Rei and Arnold also fail to disclose the claimed heat input or details to so calculate, or release of CR actives can be controlled by adjusting heat input of 6000-5000. As to 112 rejections, they have been overcome. Examiner appreciates heat input to be defined as Q at p.55, lines 26-33; However, uses standard conditions as are known in the art, thus, the recitation of the calculated heat input is not an inventive concept or feature. Applicant has not provided any objective evidence of unexpected, unobvious or critical results, attainable by 1) calculating or 2) measuring leaching of the resultant Cr granule. The effects of added heat to a polymer would be expected to be a denser, more highly crosslinked coating, with resultant Reduction in Leaching of the coated active. It would be within the purview of the Skill of the artisan to increase or decrease the heat in order to decrease or increase active release.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703)308-2412.

The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR
January 13, 2003



NEIL S. LEVY
PRIMARY EXAMINER